

Regulation No. 2 of 23 January 2008

on the assessment of the adequacy of the supervision framework in the third home country and the checking of the matching of the supervision exercised by the competent authorities in third countries with that governed by the principles stipulated in Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy, as approved, amended and supplemented by Law No. 227/2007

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Having regard to the provisions of Art. 15 para. (2), Art. 26 paras. (1) and (2) let. c), Art. 72 para. (1), Art. 77 para. (2), Art. 206 and Art. 207 of Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy, as approved, amended and supplemented by Law No. 227/2007,

In virtue of the provisions of Art. 25 para. (2) let. a) and Art. 48 para. (1) of Law No. 312/2004 – the Statute of the National Bank of Romania, as well as of Art. 420 para. (1) of Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy, as approved, amended and supplemented by Law No. 227/2007,

The National Bank of Romania issues this Regulation.

CHAPTER I

General provisions

Art. 1 – This Regulation establishes the principles for:

a) assessing the adequacy of the supervision framework in the third home country of an entity that is to acquire qualifying holdings in a credit institution, Romanian legal entity,

respectively of a credit institution that intends to carry out activity in Romania through a branch;

b) checking, in accordance with the provisions of Art. 206 of Government Emergency Ordinance No. 99/2006, as approved, amended and supplemented by Law No. 227/2007, on the matching of the consolidated supervision exercised by the competent authorities in third countries;

c) checking, in accordance with the provisions of Art. 77 para. (2) of Government Emergency Ordinance No. 99/2006, as approved, amended and supplemented by Law No. 227/2007 on the matching of the prudential regulation framework in the case of credit institutions' branches in third countries;

d) checking of the matching of regulation and supervision rules applied by competent authorities in third countries with those enforced in Romania, in order to calculate the minimum capital requirements for covering the risks of a credit institution.

Art. 2 – (1) The terms and expressions used in this Regulation have the meaning provided for in Art. 7 of Government Emergency Ordinance No. 99/2006, as approved, amended and supplemented by Law No. 227/2007.

(2) For the purposes of this Regulation, the terms and expressions below shall have the following meaning:

a) supervisory authority – the authority empowered by law or by other regulations to exercise supervision over a regulated entity, either on an unconsolidated or a consolidated basis;

b) regulated entity – any entity of the financial sector, which is authorised and supervised by a supervisory authority in a third country and which intends to acquire qualifying holdings in the capital of a credit institution, Romanian legal entity.

CHAPTER II

The assessment of the adequacy of the supervision framework in the third home country and the checking of the matching of the supervision exercised by the competent authorities in third countries

Art. 3 – (1) The assessment of the adequacy of the supervision framework in a third country shall be made when at least one regulated entity intends to gain the control or, where appropriate, a qualifying holding in a credit institution, Romanian legal entity, already established or which is to be established.

(2) The assessment of the adequacy of the supervision framework in a third country shall also be made when a credit institution in a third country intends to carry out activity in Romania through a branch.

Art. 4 – (1) For the purpose of Art. 3 para. (1), the assessment of the adequacy of the supervision framework in the third home country shall be made in all cases in which a regulated entity intends to gain control, directly or indirectly, over a credit institution, Romanian legal entity.

(2) As appropriate, based on the shareholding structure, the adequacy of the supervision framework in the third home country may be also assessed where a regulated entity intends to acquire, directly or indirectly, a qualifying holding in a credit institution, Romanian legal entity, without acquiring the control over this credit institution or to increase the acquired qualifying holding to a level equal to or higher than 20% or 33% of the share capital or of the voting rights.

Art. 5 – (1) The assessment of the adequacy of the supervision framework in the third home country of a regulated entity shall be made by checking its compliance with the principles and standards accepted worldwide, specific to each financial sector.

(2) Where the regulated entity provided for in para. (1) is not a credit institution, while assessing the adequacy of the supervision framework in the third country, the National Bank of Romania shall cooperate, where appropriate, with the National Securities Commission, the Insurance Supervisory Commission or the Private Pension System Supervisory Commission.

Art. 6 – (1) The assessment of the adequacy of the supervision framework in a third home country of a credit institution shall be made by checking its compliance with each of the Core Principles for an efficient supervision issued by the Basel Committee on banking supervision.

(2) The checking of the conformity with the supervision framework in the third home country of a credit institution shall be made based on the self-assessment carried

out by the respective supervisory authority by filling in the questionnaire posted on the website of the National Bank of Romania in section “Legislation”/“Regulation of credit institutions”, applicable at the time of the request.

Art. 7 – While assessing the adequacy of the supervision framework in the third home country of a credit institution, insofar as it is relevant, depending on the conditions specific to each case, the National Bank of Romania may take into consideration the results of the assessments made by the supervisory authorities in other EU Member States, the results of the supervision system quality assessments carried out by the International Monetary Fund and the World Bank within the programmes unfolded by these institutions (e.g., under the Financial Sector Assessment Programme – FSAP), the analyses and assessments of the working bodies within the European Union institutions and forums (such as the Committee of European Banking Supervisors, the European Banking Committee) and of the rating agencies, as well as the peer reviews carried out, for example, by the regional groups of banking supervisors.

Art. 8 – The National Bank of Romania considers that the supervision framework in a third country is appropriate, without making its own assessment, where the competent forums of the European Union assessed the supervision framework in the third country, inclusively on a consolidated basis as generally equivalent to that governed by the principles of Directive 48/2006/EC of 14 June 2006 of the European Parliament and of the Council on the taking up and pursuit of the business of credit institutions, as published in Official Journal of the European Union L 177/30 June 2006.

Art. 9 – **(1)** The National Bank of Romania’s checking of the consolidated supervision exercised by the competent authorities in third countries shall be made in order to ensure that the respective consolidated supervision is equivalent to that governed by the principles stipulated in Government Emergency Ordinance No. 99/2006, as approved, amended and supplemented by Law No. 227/2007 and by the regulations issued for its application.

(2) The checking of the matching of the prudential regulation framework of credit institutions in third countries which carry out activity in Romania through branches shall be made in order to analyse the possibility of exemption of these entities from the application of some prudential requirements stipulated by Government Emergency

Ordinance No. 99/2006, as approved, amended and supplemented by Law No. 227/2007 and by the regulations issued for its application.

(3) The checking of the matching of the regulation and supervision rules applied by the competent authorities in third countries with those applied in Romania shall be made in order to calculate the minimum capital requirements for covering the risks of a credit institution.

Art. 10 – In order to apply the provisions of Art. 207 of Government Emergency Ordinance No. 99/2006, as approved, amended and supplemented by Law No. 227/2007, the checking of the matching of the supervision on a consolidated basis exercised by the competent authorities in third countries shall be made in the case of credit institutions authorised by the National Bank of Romania.

Art. 11 – The checking of the matching of the prudential regulation framework of credit institutions in third countries which carry out activity in Romania through branches and the checking of the matching of the regulation and supervision rules applied by the competent authorities in third countries with those applied in Romania in order to calculate the minimum capital requirements for covering the risks of the credit institution shall be made at the request of credit institutions.

Art. 12 – The National Bank of Romania shall perform the checking specified in Art. 9 based on the information provided by the competent authorities in third countries by filling in the questionnaire posted on the National Bank of Romania website in section “Legislation”/“Regulation of credit institutions”, applicable at the time of the request.

Art. 13 – Where there is a general opinion of the European Banking Committee concerning the matching of the supervision on a consolidated basis exercised by the competent authority in a third country, the National Bank of Romania shall take into consideration this opinion, without making its own checking.

Art. 14 – **(1)** While checking the matching of the supervision on a consolidated basis exercised by the competent authorities in third countries, the National Bank of Romania may take into consideration the result of the checking made by the competent authorities in EU Member States, except where the conditions of the checking differ significantly from those of the previous checking.

(2) The provisions of para. (1) shall also be applied while checking the matching of the prudential regulation framework of credit institutions in third countries, which carry out activity in Romania through branches, as well as while checking the matching of the regulation and supervision rules applied by competent authorities in third countries, with those applied in Romania, in order to calculate the minimum capital requirements for covering the risks of a credit institution.

Art. 15 – While checking the matching of the supervision on a consolidated basis exercised by the competent authorities in third countries, insofar as it is relevant, depending on the circumstances specific to each case, the National Bank of Romania may take into consideration the results of the checking made by the working bodies within the institutions and forums of the European Union (such as the Committee of European Banking Supervisors).

Chairman of the National Bank of Romania Board,

Mugur Constantin Isărescu